

SENATE PUBLIC AFFAIRS COMMITTEE SUBSTITUTE FOR
SENATE BILL 38

46TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2003

AN ACT

RELATING TO CRIMINAL SENTENCING; PROVIDING INCREASES IN A BASIC
SENTENCE OF IMPRISONMENT WHEN A CRIME IS INTENTIONALLY
COMMITTED AGAINST CERTAIN PERSONS OR THEIR PROPERTY; ENACTING A
NEW SECTION OF THE CRIMINAL SENTENCING ACT.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. A new section of the Criminal Sentencing Act
is enacted to read:

"NEW MATERIAL NONCAPITAL FELONIES, MISDEMEANORS OR PETTY
MISDEMEANORS COMMITTED AGAINST A PERSON OR A PERSON'S PROPERTY
BECAUSE OF THE ACTUAL OR PERCEIVED RACE, RELIGION, COLOR,
NATIONAL ORIGIN, ANCESTRY, GENDER, GENDER IDENTITY OR SEXUAL
ORIENTATION OF THE PERSON-- ALTERATION OF BASIC SENTENCE. --

A. When a separate finding of fact by the court
shows that an offender intentionally injured a person or

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underscored material = new
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1 intentionally damaged a person's property because of the actual
2 or perceived race, religion, color, national origin, ancestry,
3 gender, gender identity or sexual orientation of that person,
4 whether or not the offender's belief or perception was correct,
5 and if the underlying crime is a petty misdemeanor, the basic
6 sentence of imprisonment prescribed for the offense in Section
7 31-19-1 NMSA 1978 may be increased by thirty days; provided
8 that the total sentence shall not exceed one hundred eighty
9 days. A sentence imposed pursuant to the provisions of this
10 subsection may include an alternative sentence that requires
11 community service, counseling or education or any combination
12 thereof and may be suspended or deferred.

13 B. When a separate finding of fact by the court
14 shows that an offender has committed a petty misdemeanor in
15 which a person was intentionally injured or a person's property
16 was intentionally damaged because of the actual or perceived
17 race, religion, color, national origin, ancestry, gender,
18 gender identity or sexual orientation of that person, whether
19 or not the offender's belief or perception was correct, and the
20 offender has previously been sentenced pursuant to the
21 provisions of this section, the basic sentence of imprisonment
22 prescribed for the offense in Section 31-19-1 NMSA 1978 may be
23 increased by sixty days; provided that the total sentence shall
24 not exceed one hundred eighty days. A sentence imposed
25 pursuant to the provisions of this subsection may include an

1 alternative sentence that requires community service,
2 counseling or education or any combination thereof and may be
3 suspended or deferred.

4 C. When a separate finding of fact by the court or
5 jury shows that an offender intentionally injured a person or
6 intentionally damaged a person's property because of the actual
7 or perceived race, religion, color, national origin, ancestry,
8 gender, gender identity or sexual orientation of that person,
9 whether or not the offender's belief or perception was correct,
10 and if the underlying crime is a misdemeanor, the basic
11 sentence of imprisonment prescribed for the offense in Section
12 31-19-1 NMSA 1978 may be increased by ninety days; provided
13 that the total sentence shall not exceed three hundred sixty-
14 four days. A sentence imposed pursuant to the provisions of
15 this subsection may include an alternative sentence that
16 requires community service, counseling or education or any
17 combination thereof and may be suspended or deferred.

18 D. When a separate finding of fact by the court
19 shows that an offender has committed a misdemeanor in which a
20 person was intentionally injured or a person's property was
21 intentionally damaged because of the actual or perceived race,
22 religion, color, national origin, ancestry, gender, gender
23 identity or sexual orientation of that person, whether or not
24 the offender's belief or perception was correct, and the
25 offender has previously been sentenced pursuant to the

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1 provisions of this section, the basic sentence of imprisonment
2 prescribed for the offense in Section 31-19-1 NMSA 1978 may be
3 increased by one hundred eighty days; provided that the total
4 sentence shall not exceed three hundred sixty-four days. A
5 sentence imposed pursuant to the provisions of this subsection
6 may include an alternative sentence that requires community
7 service, counseling or education or any combination thereof and
8 may be suspended or deferred.

9 E. When a separate finding of fact by the court or
10 jury shows that an offender intentionally injured a person or
11 intentionally damaged a person's property because of the actual
12 or perceived race, religion, color, national origin, ancestry,
13 gender, gender identity or sexual orientation of that person,
14 whether or not the offender's belief or perception was correct,
15 and if the underlying crime is a noncapital felony, the basic
16 sentence of imprisonment prescribed for the offense in Section
17 31-18-15 NMSA 1978 may be increased by one year. A sentence
18 imposed pursuant to the provisions of this subsection may
19 include an alternative sentence that requires community
20 service, counseling or education or any combination thereof and
21 may be suspended or deferred.

22 F. When a separate finding of fact by the court
23 shows that an offender has committed a noncapital felony in
24 which a person was intentionally injured or a person's property
25 was intentionally damaged because of the actual or perceived

1 race, religion, color, national origin, ancestry, gender,
2 gender identity or sexual orientation of that person, whether
3 or not the offender's belief or perception was correct, and the
4 offender has previously been sentenced pursuant to the
5 provisions of this section, the basic sentence of imprisonment
6 prescribed for the offense in Section 31-18-15 NMSA 1978 may be
7 increased by three years. A sentence imposed pursuant to the
8 provisions of this subsection may include an alternative
9 sentence that requires community service, counseling or
10 education or any combination thereof and may be suspended or
11 deferred.

12 G. If the case is tried before a jury and if a
13 prima facie case has been established showing that in the
14 commission of the offense a person was intentionally injured or
15 a person's property was intentionally damaged because of the
16 actual or perceived race, religion, color, national origin,
17 ancestry, gender, gender identity or sexual orientation of that
18 person, whether or not the offender's belief or perception was
19 correct, the court shall submit the issue to the jury by
20 special interrogatory. If the case is tried by the court and
21 if a prima facie case has been established showing that in the
22 commission of the offense a person was intentionally injured or
23 a person's property was intentionally damaged because of the
24 actual or perceived race, religion, color, national origin,
25 ancestry, gender, gender identity or sexual orientation of that

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1 person, whether or not the offender's belief or perception was
2 correct, the court shall decide the issue and shall make a
3 separate finding of fact regarding the issue.

4 H. As used in this section:

5 (1) "gender identity" means a person's self-
6 perception, or perception of that person by another, of the
7 person's identity as a male or female based upon the person's
8 appearance, behavior or physical characteristics that are in
9 accord with or opposed to the person's physical anatomy,
10 chromosomal sex or sex at birth; and

11 (2) "sexual orientation" means
12 heterosexuality, homosexuality or bisexuality, whether actual
13 or perceived. "

14 Section 2. EFFECTIVE DATE. --The effective date of the
15 provisions of this act is July 1, 2003.

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